

**In the United States Court of Federal Claims**  
**OFFICE OF SPECIAL MASTERS**

No. 04-997V

Filed: April 29, 2009

Not To Be Published

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LAURA M. MERSBURGH, Parent and Next\*

Friend of ELIJAH MERSBURGH, a minor \*

Petitioner,

v.

SECRETARY OF THE DEPARTMENT \*

OF HEALTH AND HUMAN SERVICES, \*

Respondent. \*

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Interim Attorneys' Fees and Costs

**INTERIM ATTORNEYS' FEES AND COSTS DECISION<sup>1</sup>**

**GOLKIEWICZ, Chief Special Master.**

Petitioner filed an Application for Award of Interim Attorneys' Fees and Costs on March 6, 2009. On April 29, 2009 petitioner filed the Parties Stipulation of Fact on Interim Attorneys' Fees and Reimbursement of Costs (hereinafter Parties Stipulation) requesting a total award of \$128,446.70 in interim attorneys' fees and costs. Petitioner's counsel indicated in the Parties Stipulation that respondent's counsel has no objection to the petitioner's request for interim attorneys' fees and other litigation costs contained in the Parties Stipulation. Parties Stipulation at 1-2.

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<sup>1</sup> Because this decision contains a reasoned explanation for the undersigned's action in this case, the undersigned intends to post this decision on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire" decision will be available to the public. Id.

Petitioner is entitled to an award of interim attorneys' fees and costs. The undersigned determines that there is no just reason to delay the entry of judgment for an award of interim attorneys' fees and costs. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk shall enter judgment as follows: \$128,446.70 in interim attorneys' fees and costs, of which, **\$33,518.07** shall be made payable jointly to petitioner and Gage & Moxley, P.C., "this payment represents all fees and costs for Gage & Moxley. Therefore, Gage & Moxley fees and costs will not be revisited in the final fee petition." Id. at 1. An award of **\$66,678.63** in interim attorney's costs shall be paid payable jointly to petitioner and Richard Gage, P.C., "this payment represents all interim costs through March 6, 2009. Therefore, Richard Gage, P.C. costs through March 6, 2009 will not be revisited in the final fee petition." Id. An interim award of **\$28,250.00** for attorney's fees shall be made payable jointly to petitioner and Richard Gage, P.C..

The undersigned notes "[b]y entering into this stipulation neither party waives any arguments that they may have in relation to the reasonableness of hourly rates for all hours claimed from 2006 forward. Those issues will be dealt with in the final fee petition." Id. at 2.

The court thanks the parties for their cooperative efforts in resolving this matter.<sup>2</sup>

**IT IS SO ORDERED.**

s/ Gary J. Golkiewicz  
Gary J. Golkiewicz  
Chief Special Master

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<sup>2</sup>Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.